

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA \*  
\* Case No. 1:12CR443-1  
vs. \*  
\* Greensboro, North Carolina  
TERRY LEE BETHEA, \* June 13, 2013  
\* 2:25 p.m.  
Defendant. \*  
\*\*\*\*\*

TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE CATHERINE C. EAGLES  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: ANDREW C. COCHRAN, ESQUIRE  
Assistant United States Attorney  
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Greensboro, North Carolina 27402

For the Defendant: WILLIAM S. TRIVETTE, ESQUIRE  
Assistant Federal Public Defender  
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Court Reporter: Lori Russell, RMR, CRR  
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Proceedings recorded by stenotype reporter.  
Transcript produced by Computer-Aided Transcription.

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P R O C E E D I N G S

(Defendant present.)

THE COURT: Okay.

4 MR. COCHRAN: Our next case this afternoon, Your  
5 Honor, if it pleases the Court, is United States of America  
6 versus Terry Lee Bethea, docket number 1:12CR443-1. The  
7 Defendant is represented by Mr. Trivette. His case is also  
8 on for sentencing today.

12 MR. TRIVETTE: It has, Your Honor. The parties  
13 agree the appropriate amount is the amount of money that was  
14 taken out of the drawer and that -- and no other amounts.

15 THE COURT: Three seventy-eight seventy-eight.

16 MR. TRIVETTE: Yes, ma'am.

17 THE COURT: All right. Okay. And there was a  
18 Defendant's position paper. I saw that. All right. So you  
19 have seen the presentence report, Mr. Trivette, then?

20 MR. TRIVETTE: I have, Your Honor.

21 THE COURT: And you reviewed it with Mr. Bethea?

22 MR. TRIVETTE: Yes, ma'am.

23 THE COURT: And are you ready for his sentencing  
24 hearing today?

25 MR. TRIVETTE: Yes, ma'am.

1                   THE COURT: And, Mr. Bethea, good afternoon.

2                   THE DEFENDANT: Good afternoon, ma'am.

3                   THE COURT: Have you seen a copy of your  
4 presentence report?

5                   THE DEFENDANT: Yes, I have.

6                   THE COURT: Have you read it and talked to your  
7 lawyer about it?

8                   THE DEFENDANT: Yes, I did.

9                   THE COURT: And do you understand the report?

10                  THE DEFENDANT: Yes, ma'am.

11                  THE COURT: Okay. Mr. Bethea, you can take your  
12 seat.

13                  Let's see. In terms of objections to the presentence  
14 report, do I need to make any corrections to it about the  
15 restitution?

16                  MR. TRIVETTE: I'm not -- yes, Your Honor, I guess  
17 so.

18                  THE COURT: I guess I do because the probation  
19 officer I think has concluded \$4,345.38. So let me see  
20 where that would be in here.

21                  MR. COCHRAN: It's on page 21, Your Honor,  
22 paragraph 90 at the top of the page.

23                  THE COURT: Thank you. All right. So I'll modify  
24 paragraph 90 to strike the restitution to Continental  
25 Casualty Company?

1                   MR. COCHRAN: Yes, Your Honor.

2                   THE COURT: Any other amendments to the  
3 presentence report?

4                   MR. TRIVETTE: Just it -- well, it also had \$500  
5 to Subway, so I guess that's --

6                   THE COURT: Thank you. I'll correct that as well.  
7 I'll strike the restitution to Continental Casualty and  
8 amend the amount to Subway to \$378.78.

9                   MR. TRIVETTE: Yes, ma'am.

10                  THE COURT: Otherwise, the Court will adopt the  
11 presentence report as written and adopt the findings of  
12 fact -- the factual findings in that report as the Court's  
13 own.

14                  The Court further finds that the report accurately  
15 calculates the guidelines applicable in this case. The  
16 total offense level is 21. Criminal history category is  
17 III. The guideline range on Count One is 46 to 57 months  
18 and 84 months consecutive on Count Two. The supervised  
19 release range is 1 to 3 years on Count One, 2 to 5 years on  
20 Count Two; and the fine range is \$12,500 to \$125,000.

21                  Did I forget anything or misspeak?

22                  MR. COCHRAN: No, Your Honor.

23                  MR. TRIVETTE: No, Your Honor.

24                  THE COURT: All right. Anybody -- I'll consider  
25 those on an advisory basis, along with other relevant

1 factors.

2           Does anybody have any additional evidence?

3           MR. COCHRAN: No, Your Honor.

4           MR. TRIVETTE: Your Honor, I'll be making a  
5 proffer during my statement to the Court.

6           THE COURT: All right.

7           MR. TRIVETTE: Your Honor, we thank both  
8 Mr. Cochran from the Government and probation, Ms. Sonya  
9 Schroeder, for their work in getting the restitution  
10 straight and I think it is the appropriate amount.

11          I'd ask the Court to consider in its judgment, if  
12 appropriate, that -- the money is sitting in the evidence  
13 room at the Winston-Salem Police Department. If the Court  
14 please if you put in something like the Winston-Salem police  
15 can return it to the Clerk of Court, then it won't be a  
16 double payment. We'll try to be working that out under any  
17 circumstances.

18          The other thing that I have put in the report, Your  
19 Honor, is regarding the abduction. It is the defense's view  
20 that four levels for the abduction is excessive. I did not  
21 term it as an objection. There was some movement within the  
22 Subway and I'm going to hand up a document that probably  
23 should be marked as Defendant's Exhibit No. 1 and I've given  
24 a copy to Mr. Cochran.

25          (Exhibit marked for identification.)

1                   MR. TRIVETTE: Your Honor, that sketch shows  
2 roughly what the scale of the Subway is. It was a -- it's a  
3 relatively small restaurant. As you walk in the door there  
4 that says "Entrance," there are some tables and chairs and  
5 then you walk up to the counter.

6                   Now, what happened that night, Mr. Bethea walked in and  
7 two employees were located in the area where you see a 30.  
8 That's my estimate of 30 feet. That's the -- the area of --  
9 the employee area back there. Both workers were inside that  
10 area. And he walked in and the evidence does show that he  
11 moved the female employee a short distance, moved the male  
12 employee a short distance. It's not exact, but it certainly  
13 is a distance less than 30 feet. I've talked about this  
14 distance with Mr. Bethea and he recalls it being an  
15 extremely short distance: 5, 10 feet. Very short.

16                  Your Honor, the Fourth Circuit has basically said  
17 almost -- I think the least amount of distance I saw was  
18 maybe 60 feet of movement. They say that would qualify as  
19 an abduction, which is why I did not object to it. It's a  
20 very broad and general permission for this District Court to  
21 find abduction.

22                  But if you look at the definition that's in the  
23 guidelines -- and I put it on page 2 -- "'Abducted'  
24 means" -- this is an example -- "means that a victim was  
25 forced to accompany an offender to a different location.

1 For example, a bank robber's forcing a bank teller from the  
2 bank into a getaway car would constitute abduction." Well,  
3 I would agree that doing something like is in the definition  
4 there, putting someone in your car to facilitate an escape,  
5 definitely qualifies as abduction.

6 Now, we also have in the guidelines at another part, in  
7 1B1.1, physical restraint, but that -- if you look at that  
8 example, physical restraint -- "physically restrained" means  
9 the forcible restraint of the victim, such as being tied up,  
10 bound or locked up. None of -- neither of those -- of  
11 course, physical restraint only carries a two-level  
12 increase. Abduction carries a four-level increase. I  
13 contend and argue to the Court that neither of these are  
14 appropriate.

15 The -- the distances that they were moved is subsumed  
16 within the robbery guidelines, and he's getting 7 years on  
17 the gun count and an additional amount on the robbery. He  
18 has pled to both. We contend that the appropriate guideline  
19 range for the Court to consider here, although it's not an  
20 objection, would be more like -- instead of an offense level  
21 21, take away the four levels for abduction and that's 17.  
22 At criminal history category II, that's more like 27 to 33.  
23 So 2 to 3 years in addition to the 7 years, we contend, more  
24 than punishes him for the offense.

25 Now, we do concede using a firearm in a robbery is a

1       serious offense. I know this Court has probably had years  
2       of experience in the state with similar crimes. I don't  
3       know what he would have gotten in state court. This Court  
4       probably does. But I would doubt that it is as severe as  
5       this sentence.

6               Your Honor, we ask the Court then to vary down on the  
7       robbery count, the one that you have some discretion, to a  
8       sentence below what is now at 46 to 57 months.

9               Thank you, Your Honor.

10              THE COURT: I just want to be sure I understand  
11       your argument. You're not objecting to the four-point  
12       increase because of the case law. You're just saying in the  
13       circumstances of this case it seems to really bump him up  
14       too high and --

15              MR. TRIVETTE: And it's a *de minimis* movement.  
16       There is movement of both employees but a very short  
17       distance. The evidence does show, if you look at the  
18       sketch, that after the robbery was over he told them to go  
19       out the back door. I contend that should not count because  
20       the abduction talks about accompanying, making an employee  
21       accompany him. So if he just says go out the back and he  
22       goes out the front, that distance shouldn't count. So  
23       whatever distances are involved here are *de minimis*.

24              THE COURT: All right. Thank you.

25               For the Government?

1                   MR. COCHRAN: Thank you, Your Honor.

2                   As Mr. Trivette indicated, we're all in agreement here  
3                   that the guidelines are properly calculated and that there  
4                   was an abduction here for the purposes of the 2B3.1  
5                   guideline.

6                   And Mr. Trivette was speaking about how it was only a  
7                   short distance that they were moved, at least the initial  
8                   distance. There were two people -- two victims in this  
9                   case, Your Honor, who were moved approximately 30 feet; and  
10                  while that might sound like a short distance while we're  
11                  talking about it here in the courtroom, we can only imagine  
12                  how terrifying that was for the victims in this case who  
13                  were there working in the Subway doing their job.

14                  The Defendant comes in armed with an handgun, points  
15                  the handgun at them and makes them get money out of the  
16                  register and move this additional distance away and then  
17                  also makes them go out the back door as he goes out the  
18                  front door while he was leaving. Maybe that counts for  
19                  abduction distance, maybe it doesn't. Regardless, I'm sure  
20                  it was pretty terrifying for the victims, Your Honor, and  
21                  that's something that needs to be taken into account while  
22                  the Court fashions its sentence that's appropriate in  
23                  considering the 3553(a) factors in this case.

24                  I would say that I think to completely discount the  
25                  abduction in this case, as Mr. Trivette is asking for, won't

1 account for that, Your Honor, won't account for the distance  
2 that these people were moved and the terror that they must  
3 have felt wondering if they were going to get out of this  
4 situation alive. And fortunately they did, but I do think  
5 that's conduct that needs to be accounted for.

6 I do agree with Mr. Trivette that certainly the  
7 abduction could have been worse. We can envision a scenario  
8 as outlined in the example of the guidelines where a  
9 defendant could have come in and actually taken them with  
10 him into the car and left and kept them with him at some  
11 length -- for some period of time. I agree that would have  
12 been worse. There are scales of everything. And while this  
13 isn't at that level, it does count for abduction like we  
14 talked about before and it also is pretty significant for  
15 the victims in this crime to have that additional factor  
16 that wouldn't be taken into account if the Court were to  
17 vary downward as Mr. Trivette suggests.

18 What I would suggest that the Court do to fashion a  
19 sentence that would be appropriate to account for the  
20 Defendant's conduct, to deter future crime, and the other  
21 factors of 3553(a) would be to accept the guideline range as  
22 calculated, Your Honor, and consider sentencing the  
23 Defendant towards the lower end of that guideline range  
24 since this certainly accounts for conduct where the victims  
25 in this case were abducted, but perhaps we can envision

1       abductions that could be worse. Perhaps move it a little  
2       bit down the scale toward the lower end of that range.

3           And I do think it's also important to point out a few  
4       items the Defendant has on his criminal history, Your Honor.  
5       The defendant has a long history of misdemeanor convictions,  
6       as the Court probably noticed. I'm not going to point out  
7       each individual one, but I would like to point out, Your  
8       Honor, that at the top of page 10, item No. 38, the  
9       Defendant was convicted of misdemeanor carrying a concealed  
10      gun in 1998. Over on page 11, item No. 41, Your Honor, the  
11      Defendant was convicted of felony possession with intent to  
12      sell cocaine and received a four- to five-month suspended  
13      sentence. As the Court is aware, that's a felony conviction  
14      under North Carolina law but falls under *Simmons* over here.  
15      So it doesn't count as a felony conviction for federal  
16      court, but I do think it's significant. Also, in February  
17      of 2002, the Defendant did also have his probation revoked  
18      for that offense and then he has continued to get some other  
19      misdemeanor convictions after that point, Your Honor.

20           So the Defendant does have -- it's not his first brush  
21      with the law, to put it one way, Your Honor. It's not his  
22      first offense that involved a firearm. And I do think this  
23      robbery is certainly serious enough where a variance would  
24      not account for the type of conduct that he did, but a  
25      sentence towards the lower end of the guideline range would,

1 followed by the mandatory consecutive sentence of 84 months  
2 on the 924(c). And that's the sentence that I would ask the  
3 Court to impose in this case.

4 Thank you very much, Your Honor.

5 THE COURT: All right. Thank you.

6 Mr. Bethea, if you would stand.

7 (The Defendant complied with the request.)

8 THE COURT: If there's anything else that you want  
9 to say to me, I'd be glad to hear from you. You certainly  
10 don't have to speak. I won't hold it against you if there's  
11 nothing you want to add to what your attorney said; but if  
12 there's anything you want to tell me, I'll be glad to  
13 listen.

14 THE DEFENDANT: Thank you, Your Honor.

15 First of all, I would like to apologize to the D.A., to  
16 you, and the taxpayers for my wrongdoing. I know what I did  
17 was wrong and I'd like to apologize. If the victims were  
18 here right now, I'd apologize to them for what I have done.

19 You know, I mean, it hurts me right now. I feel so  
20 embarrassed about what I have done because, like, my  
21 daughter came to see me. You know, I mean, she asked me how  
22 can I do something stupid like that and that right there  
23 hurt me more than me being locked up, you know what I mean,  
24 for me to do a stupid thing like that. And I apologize for  
25 what I have done.

1           You know, I would like to thank Mr. Trivette right now  
2 for all the things he has done on my behalf.

3           Like I say, Your Honor, I apologize for what I've done  
4 and right now I just ask for your mercy. Thank you.

5           THE COURT: All right. Thank you, Mr. Bethea.

6 You can have a seat for a moment.

7 (Pause in the proceedings.)

8           THE COURT: All right. Stand up, Mr. Bethea.

9 (The Defendant complied with the request.)

10           THE COURT: I've taken the guidelines into account  
11 on an advisory basis and considered the other factors as set  
12 forth by Congress as being important in sentencing. It does  
13 seem to me that the guidelines take into account the  
14 information relevant in this case and give that information  
15 appropriate weight so that a sentence within the guideline  
16 range is appropriate.

17           I've considered the Defendant's argument for a sentence  
18 below the guideline range on the -- on Count One,  
19 specifically that the four-point enhancement overstates the  
20 seriousness of the nature of the offense. Certainly I agree  
21 that this is not the worst abduction that there could be,  
22 but it was a serious offense involving a gun. There were  
23 two victims, which I think makes it worse, two people who  
24 lived through this; and it just seems that under the -- the  
25 nature and circumstances of the offense make a sentence

1       within the guideline range appropriate. But I do agree it's  
2       not necessary to go to the middle or the high end I believe  
3       would be inappropriate.

4           So on Count One, I will sentence him to 46 months in  
5       the custody of the Bureau of Prisons and on Count Four  
6       (sic), as required by law, 84 months to run consecutively.

7           He'll pay a special assessment of \$100 on each count,  
8       due and payable immediately. To the extent he cannot  
9       immediately comply, the Court recommends he participate in  
10      the Inmate Financial Responsibility Program.

11           The Court will waive a fine based on inability to pay  
12      but will require restitution in the amount of \$378.78.

13           You didn't ask me for -- it didn't appear substance  
14      abuse was a big issue?

15           MR. TRIVETTE: We have not made a request for  
16      intensive.

17           THE COURT: Okay. The active sentence will be  
18      followed by a period of three years of supervised release on  
19      each count to run concurrent.

20           You'll need to comply with the standard conditions, as  
21      well as special conditions set forth by the probation  
22      officer in the recommendations. To summarize those, he  
23      shall provide any requested financial information to the  
24      probation officer since it appears the crime was motivated  
25      by financial need and he shall not borrow any money without

1 approval. There were some substance abuse issues, so I will  
2 require him to submit to testing at any time and treatment  
3 as directed.

4 It's agreeable to the Government to direct the police  
5 department to turn the money over to the Clerk?

6 MR. COCHRAN: Yes, Your Honor.

7 THE COURT: All right. So ordered so that can be  
8 applied to his restitution.

9 He does have a right to appeal. That has to be done in  
10 writing within 14 days.

11 And, Mr. Bethea, if you want to do that, you can let  
12 Mr. Trivette know.

13 What have I forgotten or what else does anybody need to  
14 ask me?

15 MR. TRIVETTE: Your Honor, I do not note anything.

16 MR. COCHRAN: Your Honor, I request that the  
17 firearm be destroyed after the appellate period has run.

18 THE COURT: So ordered.

19 Mr. Bethea, it's just a sad thing -- well, it's sad  
20 when anybody goes to prison, it really is, but, you know,  
21 somebody your age and I -- I know -- I could tell from your  
22 voice that your experience with your daughter was really  
23 tough for you, and I hope when you get out that nothing like  
24 this happens again and you're able to be with your family,  
25 where you need to be. Good luck.

1                   THE DEFENDANT: Thank you, Your Honor.

2                   THE COURT: Did I forget something?

3                   PROBATION OFFICER: Your Honor, it appears on page  
4 21 of the presentence report that -- I think you ordered  
5 restitution of \$378.78. Seized was 368.50 so he would have  
6 like \$10 and some balance that would need to be ordered as  
7 restitution or as a payment on supervised release.

8                   THE COURT: All right. Thank you. I appreciate  
9 that. I didn't pick up on the difference there.

10                  So I will direct him to pay any unpaid restitution and  
11 it looks like it will be less than \$15. So any unpaid  
12 restitution in a one-time payment 120 days after his release  
13 from active incarceration.

14                  All right. Anything else?

15                  MR. TRIVETTE: Not from the defense, Your Honor.

16                  THE COURT: All right. Thank you, Mr. Bethea.  
17 Good luck.

18                  THE DEFENDANT: Thank you very much.

19                  THE COURT: I believe that's the business for  
20 today?

21                  MR. COCHRAN: Yes, Your Honor, that completes our  
22 docket.

23                  THE COURT: All right. We'll be adjourned.

24                  (Proceedings concluded at 2:45 p.m.)

25

## C E R T I F I C A T E

I, LORI RUSSELL, RMR, CRR, United States District Court Reporter for the Middle District of North Carolina, DO HEREBY CERTIFY:

That the foregoing is a true and correct transcript of the proceedings had in the within-entitled action; that I reported the same in stenotype to the best of my ability and thereafter reduced same to typewriting through the use of Computer-Aided Transcription.

Hori Russell

Lori Russell, RMR, CRR  
Official Court Reporter

Date: 8/19/13